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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE TESLA, INC. SECURITIES
LITIGATION

Case No. 3:18-cv-04865-EMC

**DECLARATION OF NATHANIEL
SMITH IN SUPPORT OF
DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

1 **I, Nathaniel Smith, declare as follows:**

2 1. I am a member of the bar of the District of Columbia and serve as Associate General
3 Counsel for Defendant Tesla, Inc. I have been employed with Tesla since April 2021, and in the
4 course of my employment have become familiar with Tesla's treatment of its proprietary business
5 information, such as that described in this declaration. I have personal knowledge of the matters
6 described below and I am competent to testify thereto.

7 2. I make this declaration pursuant to the Northern District of California Civil Local
8 Rule 795(c), in support of Defendants' Administrative Motion To Seal ("Motion to Seal").

9 3. On July 1, 2022, the Parties filed their early Motions *In Limine* and the Oppositions
10 thereto. (Dkt. 448, 448-1, 450, 450-1, 451, 451-1, 452, 452-1).

11 4. Defendants filed a declaration containing the exhibits cited in all of the Parties'
12 motions and oppositions. (Dkt. 453, 453-1).

13 5. In conjunction with Plaintiff's Opposition to Defendants' Motion *In Limine* No. 3 to
14 Preclude Evidence or Argument Concerning an Unpled August 13 Purported Misrepresentation
15 (Dkt. 452-1), Plaintiffs cite four exhibits marked Confidential (Exhibits 44-47).

16 6. The Court has previously granted Tesla's Administrative Motion to Seal these same
17 exhibits. (Dkt. 432).

18 7. On May 20, 2020, this Court entered a Protective Order (Dkt. No. 255), to which the
19 parties agreed. The Protective Order provides for the protection of "Confidential" information,
20 described as "information (regardless of how it is generated, stored or maintained) or tangible things
21 that qualify for protection under Federal Rule of Civil Procedure 26(c) and other proprietary or
22 private information warranting special protection from public disclosure and from use for purposes
23 other than prosecuting this litigation." In accordance with the terms of the Protective Order, Tesla
24 designated certain produced documents and deposition testimony as "Confidential."

25 8. The Motion to Seal concerns such Confidential documents that reflect Tesla's and
26 third party shareholder's and investor's sensitive, non-public communications regarding Elon
27 Musk's August 7, 2018 bid to take Tesla private. It is Tesla's practice to maintain all such non-
28 public documents and communications strictly confidential, therefore, it is my belief that all of these

1 individuals and third parties involved had an expectation of the private and confidential nature of
2 their communications.

3 9. Exhibits 44-47 reflect non-public, internal communications of a third-party
4 shareholder of Tesla, discussing the shareholder's reactions to and consideration of participating in
5 the Take Private Bid. Exhibits 44-47 cannot be parsed and Defendants request to seal them in full.

6 10. Public disclosure of these confidential, non-public materials will reveal private
7 communications related to Tesla investors' and shareholders' investment decisions, strategies, and
8 feedback, all of which were expressed with the expectation of privacy. The release of such
9 information publicly could chill future investors' willingness to speak freely and candidly with
10 Defendants for fear of their communications being released publicly in the future, and may interfere
11 with or harm Tesla's ability to seek future funding or investors, as well as its relationships with
12 existing investors.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct and that this document was executed in Washington, D.C.

15 DATED: July 5, 2022
16
17

18 By /s/ Nathaniel Smith
Nathaniel Smith

19 ****

20 I, Kyle K. Batter, am the ECF user whose ID and password are being used to file the above
21 declaration. In compliance with Local Rule 5-1(h)(3), I hereby attest that Nathaniel Smith has
22 concurred in the filing of the above declaration.

23 DATED: July 5, 2022

24 QUINN EMANUEL URQUHART &
SULLIVAN, LLP

25
26 By /S/ Kyle Batter
27 Kyle Batter
28